IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Saturday, the Seventeenth day of April Two Thousand Twenty One

PRESENT

THE HON`BLE MR JUSTICE M.SUNDAR

CMP.NO.7090 OF 2021

IN SA.NO.1203 OF 2019

DR.R.RAMANARAYANAN [PETITIONER]

Vs

CHIDAMBARAM MUNICIPALITY [RESPONDENT]
REP. BY ITS COMMISSIONER,
CHIDAMBARAM

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of ad interim injunction restraining the Respondent Municipality, their men or any person acting in their behalf from taking any coercive action in pursuance of the Notice dated 29.01.2009 (in CMP.NO.7090 OF 2021) pending disposal of the above SA.NO.1203 OF 2019.

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.SRINATH SRIDEVAN, Advocate for the petitioner and of MR.A.THIRUMALAI RAJA for MR.M.KIRUBAHARAN, standing counsel for the respondent, the court made the following order:-

Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 15.04.2021, which reads as follows:

> '*Mr.Srinath Sridevan, learned counsel on record for the petitioner/appellant and Ms.B.Nirmala, learned counsel representing Mr.M.Kirubaharan, learned counsel on record for the sole respondent are before this virtual Court. This Court is informed that Mr.M.Kirubaharan is the standing counsel for Chidambaram Municipality, which is the sole respondent.*
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> *2. Captioned main Second Appeal was presented in this Court on 21.11.2012. Learned counsel for appellant submits that it went through twists and turns in terms of case file being misplaced, papers being reconstructed and ultimately it was taken on file as SA.No.1203 of*

2019.

3. Captioned Second Appeal was admitted by this Court by a Hon'ble Predecessor Judge on 10.07.2020 on three questions proposed as substantial questions of law by the protagonist of the second appeal and the admission order reads as follows:

'The second appeal is admitted on the following questions of law:-

i) Whether the Municipality can demand property tax for twelve years when the limited period to demand property tax is for only three years?

ii) Whether the limitation to collect the property tax for Municipalities is three years or twelve years?

iii) Whether the lower Appellate Court was right in concluding that the demand notice issued in the name of the dead person is valid?

2. Mr.M.Kirubakaran appears for the respondent.'

4. In the aforementioned admission order, in question no.1, there is a typo and 'limited' has to be read as 'limitation'.

5. Captioned petition has now been moved stating that the respondent-Municipality is taking coercive steps to collect property tax pursuant to 29.01.2009 notice, which is the epicenter of the entire litigation.

6. From the submissions made today, it comes to light that this matter turns heavily on Section 345 of 'The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)', which shall hereinafter be referred to as 'District Municipalities Act' for the sake of convenience and clarity. Section 345 of District Municipalities Act deals with limitation for recovery of dues and the period which originally read as 'twelve years' was amended and changed as 'three years' on and from 25.06.2008 vide 'Tamil Nadu Municipal Laws (Third Amendment) Act, 2008 (Tamil Nadu Act 36 of 2008)', which shall hereinafter be referred to as 'Third amendment Act' for the sake of convenience.

7. Questions 1 and 2 on which the captioned Second Appeal has been admitted can be rolled into one and reformulated as follows:

'Whether the Third Amendment Act is retrospective qua collection of tax dues in the light of Limitation not being a mere rule of procedure?'

8. Ms.B.Nirmala, learned counsel representing the standing counsel for Chidambaram Municipality requests that the above reformulation may please be considered in the next listing in the presence of her senior Mr.M.Kirubaharan. Request acceded to.

9. Learned counsel for petitioner/appellant makes a simple submission that 29.01.2009 notice which demands property tax for the period II/1999-2000 [from 01.10.1999] to I/2008-2009 (upto 31.03.2009) being the epicenter of the litigation cannot now be pressed into service when Second Appeal has been admitted and when this Court is in seizin of the matter where this notice was inter alia held to be invalid by the trial Court and reversed by the First Appellate Court at the instance of the respondent-Municipality.

10. Faced with the above situation, learned counsel representing the standing counsel for Municipality requests for a short accommodation.

List on 17.04.2021.'

2. Today, Mr.Srinath Sridevan, learned counsel on record for petitioner/appellant and Mr.A.Thirumalai Raja, learned counsel representing Mr.M.Kirubaharan, counsel on record for sole respondent [standing counsel for Chidambaram Municipality] are before this virtual Court.

3. Adverting to aforementioned earlier proceedings, learned counsel for petitioner/appellant submits that he has email filed certain additional documents by way of a typed set of papers dated 17.04.2021 and that the documents contained in this typed set would demonstrate that the petitioner/appellant has paid property tax from 01.04.2009 up-to date. Learned counsel for petitioner/appellant submits that this typed set has been email shared with learned counsel for respondent. Mr.A.Thirumalai Raja, learned counsel, on instructions submits that the payments have in fact been made but owing to some difficulty with the system and software, it has been erroneously adjusted towards earlier dues covered under 29.01.2009 notice and necessary reversal/adjustment would be made. This submission is recorded.

4. In the light of the aforementioned undisputed position, it comes to light that the petitioner/appellant is not in arrears of tax post period covered under 29.01.2009 notice and with regard to validity of 29.01.2009 notice, this Court is in seizin of the matter.

5. Therefore, it is appropriate that the 29.01.2009 notice is kept in abeyance till disposal of the captioned main second appeal. To be noted, today learned counsel for petitioner/appellant is ready to argue the second appeal, but learned counsel for

respondent requests for adjournment by a fortnight citing difficulty for Mr.M.Kirubaharan, standing counsel for respondent-Municipality. Learned counsel for respondent requests that the main second appeal may please be listed for final disposal on 30.04.2021.

6. More importantly, with regard to reformulation, the substantial question of law captured in paragraph 7 of the previous listing i.e., substantial question of law formulated by this Court shall now be substantial question of law no.4 in addition to the three substantial questions of law on which the Hon'ble predecessor Judge has admitted the captioned second appeal on 10.07.2020.

7. In the light of the narrative thus far, a *prima facie* case has been made out, balance of convenience is in favour of the petitioner/appellant as subsequent tax has been paid and if tax demand under impugned notice is collected, it would lead to imbalance and it follows as a sequitur that it can also cause irreparable legal injury. Therefore, this read in the context of stated position of respondent Municipality leads to the sequitur that prayer for injunction as prayed for deserves to be acceded to.

Captioned CMP is allowed. There shall be no order as to costs.

-sd/-
17/04/2021

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT MUNSIF
CHIDAMBARAM

2 THE SUBORDINATE JUDGE,
CHIDAMBARAM

Order
in

CMP.NO.7090 OF 2021
IN SA.NO.1203 OF 2019

Date :17/04/2021

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